

## **REMARKS**

Claims 1, 7, 14, 20, 27, and 31 are pending in the application.

Claims 1, 7, 14, 20, 27, and 31 are currently amended, and claims 2-6, 8-13, 15-19, 21-26, 28-30, and 32-35 are canceled. Applicants respectfully submit that no new matter is added to currently amended claims 1, 7, 14, 20, 27, and 31.

Claims 1, 4-6, 14, 17-19, 27, 29-31, and 33-34 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent Application Publication No. 2002/0013782 to Ostroff et al., hereinafter, Ostroff, in view of U.S. Patent No. 6,044,354 to Asplen, Jr., hereinafter, Asplen, in further view of U.S. Patent Application Publication No. 2003/0216955 to Miller et al., hereinafter, Miller, and yet further in view of U.S. Patent Application Publication No. 2002/0152110 to Stewart et al., hereinafter, Stewart.

Claims 2, 15, 28, and 32 stand rejected under 35 U.S.C. 103(a) as unpatentable over Ostroff, Asplen, Miller, Stewart, and further in view of Principles of Marketing, by Kotler and Armstrong, Eight Edition, Prentice Hall, 1999, hereinafter, Kotler.

Claims 3 and 16 stand rejected under 35 U.S.C. 103(a) as unpatentable over Ostroff, Asplen, Miller, Stewart and further in view of U.S. Patent Application Publication No. 2001/0010041 to Harshaw.

Claims 7-8, 11-13, 20-21, 24-26, and 35 stand rejected under 35 U.S.C. 103(a) as unpatentable over Ostroff, in view of Asplen and further in view of Miller.

Claims 9 and 22 stand rejected under 35 U.S.C. 103(a) as unpatentable over Ostroff, Asplen, Miller, and further in view of Kotler.

Claims 10 and 23 stand rejected under 35 U.S.C. 103(a) as unpatentable over Ostroff, Asplen, Miller, Harshaw, and further in view of Stewart.

Applicants respectfully traverse the rejections based on the following discussion.

### **I. The Prior Art Rejections**

#### **A. The 35 U.S.C. 103(a) Rejection over Ostroff, Asplen, Miller, and Stewart**

##### **1. The Ostroff Disclosure**

Ostroff discloses an automated software program that will provide comprehensive and continuous monitoring of specific targeted sites, such as an e-tailers competitor's sites. The invention will provide reports based on automated analysis of the information gathered during the monitoring process. In the case of e-tailers, it will provide information regarding diverse areas of their rival's site including, their pricing, their product catalog, the structure and design of their site and the placement of their site in search engine lists. (Paragraph [0022], which is cited by the Office Action).

Ostroff also discloses that among the questions which the invention would answer are those directed to their competitor's marketing strategy, their competitor's marketing mix, what products have been added or deleted from their competitor's product site. Furthermore, the invention would allow the e-tailer to determine whether specific items appear on their rival's site and how the rival's are promoting and shipping their products. (Paragraph [0025], which is cited by the Office Action).

## **2. The Asplen Disclosure**

Asplen discloses in Fig. 1A that his program initially presents to a user at station 14, a main menu screen presenting various selections including the process for entering a new idea for a product or for dealing with an existing product already in the planning process. If the user wishes to enter an idea for a new product, the selection is made and screens are presented prompting the user to enter pertinent information for chapter 1.0 idea managing, section 1.1 new idea. This information is entered by fields and includes the user's identity, such as a name, telephone number, address and department, the current situation, environment or problem that gave rise to the new idea, the idea or solution itself and any information concerning existing products on the market that might solve the problem. (col. 2, lines 45-58, which are cited by the Office Action).

## **3. The Miller Disclosure**

Miller discloses a product design methodology, in which an attribute map 32 includes representations that are computer generated charts and graphs that translate market data from

consumer 14 and competitor 16 into meaningful information. Waypoint conclusions 38 represent categories of consumer experience and perception of products and product packaging. Waypoint conclusions 38 provide summaries from the stakeholders 18 as a function of the client POV 30 chart and attribute mapping 32, and further provides design direction from improved products, product packaging, and services. Examples of attributes include product or product packaging brands, color, price and shape. Other attributes include specific features of a product or product packaging, for example, how well a product functions, the of use or convenience, the look and feel, etc. For example, consumer experience includes a consumer's direct use with a product or product package. Further, a consumer's perception represents beliefs the consumer has for a product, product package or brand. (Paragraph [0037], which is cited by the Office Action).

Miller also discloses that product and product packaging attributes are identified in waypoint conclusions 38. Waypoint conclusions 38 provide information directing development of products and packaging to ensure success in the marketplace. The information received from the client 12, consumer 14 and competitor 16, and associated manipulation thereof as represented in the attribute map 32 and client POV 30 is used to provide waypoint conclusions 38 and design criteria 40 for product and product package development. The waypoint conclusions 38 and design criteria eventually are used for new product and packaging creative exploration 42. (Paragraph [0038], which is cited by the Office Action).

#### **4. The Stewart Reference**

Stewart discloses that Fig. 7 illustrates a survey module 50 having two single response interactive modules on one Web page that provides for real time feedback to the Participant. This type of module 50 is referred to as a Single Response, Real Time Feedback module 84. As seen in Fig. 7, a Single, Real Time Feedback interactive module 84 allows the Participant to select from a menu of selections 86 that will change the appearance of a graphic or subject 88 upon the selection and de-selection of a menu item 86. Depending on which menu selection 86 is highlighted, the appearance of the subject 88 will change. Each selection 86 corresponds to a layer that is used to change a characteristic of the subject 88. Thus, upon marketing a selection

86, all layers that do not relate to the selection are hidden. (Paragraph [0054], which is cited by the Office Action).

## **5. Arguments**

Currently amended, independent claims 1 and 14 recite in relevant part,

"processing said competitors' data,

wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes;

identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data,

...

wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and

conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success,

wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data;

conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis".

Similarly, currently amended, independent claims 27 and 31 recite in relevant part,

"a processor configured to:

...

process said competitors' data,

wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes;

identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data,

...

wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and

conduct conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success,

wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data;

conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis".

Applicants respectfully submit that Ostroff does not disclose, teach or suggest at least the present invention's features of: 1) a merchant inputting selected value ranges for product and positioning attributes to be compared to a competitors' product and positioning attributes; 2) forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; 3) conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and 4) conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 14, 27, and 31. (emphases added).

Instead, Ostroff merely discloses monitoring competitors' web sites for changes in pricing and products.

In addition, Applicants respectfully submit that Asplen also does not disclose, teach or suggest at least the present invention's features of: 1) a merchant inputting selected value ranges for product and positioning attributes to be compared to a competitors' product and positioning attributes; 2) forming of clusters based on the values of product and positioning attributes of a

shortlist of the competitors' products and using a distance metric that factors in a business objective; 3) conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and 4) conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 14, 27, and 31. (emphases added).

Instead, Asplen merely discloses a program for a user to enter an idea for a new product or an existing product in a planning process.

Furthermore, Applicants respectfully submit that Miller also does not disclose, teach or suggest at least the present invention's features of: 1) a merchant inputting selected value ranges for product and positioning attributes to be compared to a competitors' product and positioning attributes; 2) forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; 3) conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and 4) conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 14, 27, and 31. (emphases added).

Instead, Miller merely discloses attribute maps, which are computer generated charts and graphs that represent consumer and competitor product attributes qualitatively arranged along perceptual/importance axes.

Finally, Applicants respectfully submit that Stewart also does not disclose, teach or suggest at least the present invention's features of: 1) a merchant inputting selected value ranges for product and positioning attributes to be compared to a competitors' product and positioning attributes; 2) forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; 3) conducting a conjoint data analysis on the clusters, in which the conjoint data

analysis on the clusters is incomplete due to inadequate inputted competitors' data; and 4) conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 14, 27, and 31. (emphases added).

Instead, Stewart merely discloses a method for collecting marketing research data from an on-line survey, which presents pre-determined stimuli to participants.

For at least the reasons outlined above, Applicants respectfully submit that Ostroff, Asplen, Miller, and Stewart, either individually or in combination, do not disclose, teach or suggest at least the present invention's features of: "processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claims 1 and 14; and "a processor configured to: ... process said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conduct conjoint data analysis on said clusters to identify said product and

positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claims 27 and 31. Accordingly, Ostroff, Asplen, Miller, and Stewart, either individually or in combination, fail to render obvious the subject matter of currently amended, independent claims 1, 14, 27, and 31 under 35 U.S.C. §103(a). The rejection of canceled dependent claims 4-6, 17-19, 29, 30, 33, and 34 is moot. Withdrawal of the rejection of claims 1, 4-6, 14, 17-19, 27, 29-31, 33, and 34 under 35 U.S.C. §103(a) as unpatentable over Ostroff, Asplen, Miller, and Stewart is respectfully solicited.

**B. The 35 U.S.C. 103(a) Rejection over Ostroff, Asplen, Miller, Stewart, and Kotler**

**1. The Kotler Disclosure**

Kotler discloses that the marketing mix consists of everything the firm can do to influence the demand of its product. The many possibilities can be collected into four groups of variables known as the "four Ps": product, price, place, and promotion. (page 49, lines 2-4, which are cited by the Office Action).

**2. Arguments**

Currently amended, independent claims 1 and 14 recite in relevant part,  
"processing said competitors' data,

wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes;

identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data,

...

wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and



positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and

conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success,

wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data;

conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis".

Similarly, currently amended, independent claims 27 and 31 recite in relevant part,

"a processor configured to:

...

process said competitors' data,

wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes;

identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data,

...

wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and

conduct conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success,

wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data;

conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis".

Claims 2, 15, 28, and 32 are canceled; hence, the rejection of canceled claims 2, 15, 28,

and 32 is moot. However, as much of the subject matter of the canceled claims is incorporated into the currently amended, independent claims, Applicants submit the following arguments for consideration by the Examiner.

Applicants respectfully submit that Kotler does not cure the deficiencies of Ostroff, Asplen, Miller, and Stewart argued above.

Applicants respectfully submit that Kotler also does not disclose, teach or suggest at least the present invention's features of: 1) a merchant inputting selected value ranges for product and positioning attributes to be compared to a competitors' product and positioning attributes; 2) forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; 3) conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and 4) conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 14, 27, and 31. (emphases added).

Instead, Kotler merely discloses a definition of a marketing mix.

For at least the reasons outlined above with respect to the rejection of the claims over Ostroff, Asplen, Miller, and Stewart, and for at least the reasons outlined immediately above with respect to the rejection of the claims over Kotler, Applicants respectfully submit that Ostroff, Asplen, Miller, Stewart and Kotler, either individually or in combination, do not disclose, teach or suggest at least the present invention's features of: "processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conducting conjoint data analysis on said clusters to identify said product and positioning

attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claims 1 and 14; and "a processor configured to: ... process said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conduct conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claims 27 and 31. Accordingly, Ostroff, Asplen, Miller, Stewart and Kotler, either individually or in combination, fail to render obvious the subject matter of currently amended, independent claims 1, 14, 27, and 31 under 35 U.S.C. §103(a). The rejection of canceled claims 2, 15, 28, and 32 is moot. Withdrawal of the rejection of claims 2, 15, 28, and 32 under 35 U.S.C. §103(a) as unpatentable over Ostroff, Asplen, Miller, Stewart and Kotler is respectfully solicited.

**C. The 35 U.S.C. 103(a) Rejection over Ostroff, Asplen, Miller, Stewart, and Harshaw**

**1. The Harshaw Disclosure**

Harshaw discloses that a conjoint analysis market survey 52 for each new product submission within a pool 30 is transmitted electronically to each registrant 36 within that pool 30 and a response thereto is solicited (Fig. 3). Of course, the surveys may be sent in hard copy form as well. In making a response to this solicited market research, registrants 36 rate and rank their preferences of the various combinations of attributes and levels presented, these determinations

representing the likelihood of purchasing a product with those respective attribute. When responses from the registrants 36 are returned 54, they may be analyzed electronically according to respective statistical utility function values or by the pools manager such that the best new product idea is selected for further development 60. (Paragraph [0036], which is cited by the Office Action).

## **2. Arguments**

Currently amended, independent claims 1 and 14 recite in relevant part,

"processing said competitors' data,

wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes;

identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data,

...

wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and

conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success,

wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data;

conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis".

Claims 3 and 16 are canceled; hence, the rejection of canceled claims 3 and 16 is moot. However, as much of the subject matter of the canceled claims is incorporated into the currently amended, independent claims, Applicants submit the following arguments for consideration by the Examiner.

Applicants respectfully submit that Harshaw does not cure the deficiencies of Ostroff, Asplen, Miller, and Stewart argued above.

Applicants respectfully submit that Harshaw also does not disclose, teach or suggest at least the present invention's features of: 1) a merchant inputting selected value ranges for product and positioning attributes to be compared to a competitors' product and positioning attributes; 2) forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; 3) conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and 4) conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 14, 27, and 31. (emphases added).

Instead, Harshaw merely discloses a method for pooling new ideas for product development including a plurality of idea pools and the use of conjoint analysis to elicit further ideas from members of a pool.

For at least the reasons outlined above with respect to the rejection of the claims over Ostroff, Asplen, Miller, and Stewart, and for at least the reasons outlined immediately above with respect to the rejection of the claims over Harshaw, Applicants respectfully submit that Ostroff, Asplen, Miller, Stewart and Harshaw, either individually or in combination, do not disclose, teach or suggest at least the present invention's features of: "processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data

analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claims 1 and 14. Accordingly, Ostroff, Asplen, Miller, Stewart and Harshaw, either individually or in combination, fail to render obvious the subject matter of currently amended, independent claims 1 and 14 under 35 U.S.C. §103(a). The rejection of canceled claims 3 and 16 is moot. Withdrawal of the rejection of claims 3 and 16 under 35 U.S.C. §103(a) as unpatentable over Ostroff, Asplen, Miller, Stewart and Harshaw is respectfully solicited.

**D. The 35 U.S.C. 103(a) Rejection over Ostroff, Asplen and Miller**

**1. Arguments**

Currently amended, independent claims 7 and 20 recite in relevant part,

"processing said competitors' data,

wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes;

identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data,

...

wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and

conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success,

wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data;

conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis".

As argued above, Applicants respectfully submit that neither Ostroff, nor Asplen, nor Miller disclose, teach or suggest at least the present invention's features of: 1) a merchant inputting selected value ranges for product and positioning attributes to be compared to a competitors' product and positioning attributes; 2) forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; 3) conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and 4) conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 7 and 20. (emphases added).

Instead, Ostroff merely discloses monitoring competitors' web sites for changes in pricing and products.

Instead, Asplen merely discloses a program for a user to enter an idea for a new product or an existing product in a planning process.

Instead, Miller merely discloses attribute maps, which are computer generated charts and graphs that represent consumer and competitor product attributes qualitatively arranged along perceptual/importance axes.

For at least the reasons outlined above, Applicants respectfully submit that Ostroff, Asplen and Miller, either individually or in combination, do not disclose, teach or suggest at least the present invention's features of: "processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with

a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claims 7 and 20. Accordingly, Ostroff, Asplen and Miller, either individually or in combination, fail to render obvious the subject matter of currently amended, independent claims 7 and 20, and dependent claims 8, 11-13, 21, and 24-26 under 35 U.S.C. §103(a). The rejection of canceled independent claim 35 and dependent claims 8, 11-13, 21, and 24-26 is moot. Withdrawal of the rejection of claims 7, 8, 11-13, 20, 21, 24-26, and 35 under 35 U.S.C. §103(a) as unpatentable over Ostroff, Asplen and Miller is respectfully solicited.

**E. The 35 U.S.C. 103(a) Rejection over Ostroff, Asplen, Miller, and Kotler**

**1. Arguments**

Currently amended, independent claims 7 and 20 recite in relevant part,

"processing said competitors' data,

wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes;

identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data,

...

wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and

conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success,

wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data;

conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis".



Claims 9 and 22 are canceled; hence, the rejection of canceled claims 9 and 22 is moot. However, as much of the subject matter of the canceled claims is incorporated into the currently amended, independent claims, Applicants submit the following arguments for consideration by the Examiner.

As argued above, Applicants respectfully submit that neither Ostroff, nor Asplen, nor Miller, nor Kotler disclose, teach or suggest at least the present invention's features of: 1) a merchant inputting selected value ranges for product and positioning attributes to be compared to a competitors' product and positioning attributes; 2) forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; 3) conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and 4) conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 7 and 20. (emphases added).

Instead, Ostroff merely discloses monitoring competitors' web sites for changes in pricing and products.

Instead, Asplen merely discloses a program for a user to enter an idea for a new product or an existing product in a planning process.

Instead, Miller merely discloses attribute maps, which are computer generated charts and graphs that represent consumer and competitor product attributes qualitatively arranged along perceptual/importance axes.

Instead, Kotler merely discloses a definition of a marketing mix.

For at least the reasons outlined above, Applicants respectfully submit that Ostroff, Asplen, Miller and Kotler, either individually or in combination, do not disclose, teach or suggest at least the present invention's features of: "processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges

for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claims 7 and 20. Accordingly, Ostroff, Asplen, Miller and Kotler, either individually or in combination, fail to render obvious the subject matter of currently amended, independent claims 7 and 20, and dependent claims 9 and 22 under 35 U.S.C. §103(a). The rejection of canceled claims 9 and 22 is moot. Withdrawal of the rejection of claims 9 and 22 under 35 U.S.C. §103(a) as unpatentable over Ostroff, Asplen, Miller and Kotler is respectfully solicited.

**F. The 35 U.S.C. 103(a) Rejection over Ostroff, Asplen, Miller, Harshaw and Stewart**

**1. Arguments**

Currently amended, independent claims 7 and 20 recite in relevant part,

"processing said competitors' data,

wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes;

identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data,

...

wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and

positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and

conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success,

wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data;

conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis".

Claims 10 and 23 are canceled; hence, the rejection of canceled claims 10 and 23 is moot. However, as much of the subject matter of the canceled claims is incorporated into the currently amended, independent claims, Applicants submit the following arguments for consideration by the Examiner.

As argued above, Applicants respectfully submit that neither Ostroff, nor Asplen, nor Miller, nor Harshaw, nor Stewart disclose, teach or suggest at least the present invention's features of: 1) a merchant inputting selected value ranges for product and positioning attributes to be compared to a competitors' product and positioning attributes; 2) forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; 3) conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and 4) conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 7 and 20. (emphases added).

Instead, Ostroff merely discloses monitoring competitors' web sites for changes in pricing and products.

Instead, Asplen merely discloses a program for a user to enter an idea for a new product or an existing product in a planning process.

Instead, Miller merely discloses attribute maps, which are computer generated charts and graphs that represent consumer and competitor product attributes qualitatively arranged along perceptual/importance axes.

Instead, Harshaw merely discloses a method for pooling new ideas for product development including a plurality of idea pools and the use of conjoint analysis to elicit further ideas from members of a pool.

Instead, Stewart merely discloses a method for collecting marketing research data from an on-line survey, which presents pre-determined stimuli to participants.

For at least the reasons outlined above, Applicants respectfully submit that Ostroff, Asplen, Miller, Harshaw and Stewart, either individually or in combination, do not disclose, teach or suggest at least the present invention's features of: "processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claims 7 and 20. Accordingly, Ostroff, Asplen, Miller, Harshaw and Stewart, either individually or in combination, fail to render obvious the subject matter of currently amended, independent claims 7 and 20, and dependent claims 10 and 23 under 35 U.S.C. §103(a). The rejection of canceled claims 10 and 23 is moot. Withdrawal of the rejection of claims 10 and 23 under 35 U.S.C. §103(a) as unpatentable over Ostroff, Asplen, Miller, Harshaw and Stewart is respectfully solicited.

## **II. Formal Matters and Conclusion**

Claims 1, 7, 14, 20, 27, and 31 are pending in the application.

With respect to the rejections of the claims over the prior art, Applicants respectfully submit that the currently amended claims are distinguishable over the cited prior art of record. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections to the claims.

In view of the foregoing, Applicants submit that claims 1, 7, 14, 20, 27, and 31, all the claims presently pending in the application, are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest time possible.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary.

Please charge any deficiencies and credit any overpayments to Attorney's Deposit Account Number 09-0441.

Respectfully submitted,

Dated: August 28, 2008

/Peter A. Balnave/  
Peter A. Balnave, Ph.D.  
Registration No. 46,199

Gibb & Rahman, LLC  
2568-A Riva Road, Suite 304  
Annapolis, MD 21401  
Voice: (410) 573-5255  
Fax: (301) 261-8825  
Email: Balnave@Gibb-Rahman.com  
Customer Number: 29154